



Legislative Bulletin.....May 9, 2007

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H.R. 1684—Department of Homeland Security Authorization Act for Fiscal Year 2008

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Numerous

Total Cost of Discretionary Authorizations: \$40.36 billion over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: 2

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1684—Department of Homeland Security Authorization Act for Fiscal Year 2008 (*Thompson, D-MS*)

Order of Business: The bill is scheduled to be considered on Wednesday, May 9th, subject to a likely structured rule. A summary of amendments made in order under the rule will be provided in a separate RSC document.

NOTE: The Manager's Amendment is expected to strike significant portions of the underlying bill. Homeland Security Committee Ranking Member Peter King (R-NY) reportedly will **oppose** the legislation once such provisions are removed. The RSC will keep you updated.

Summary of the bill as reported: H.R. 1684 would authorize FY2008 appropriations for the Department of Homeland Security (DHS). Major provisions of the legislation, by title, are as follows:

Title I—Authorization of Appropriations

- Authorizes **\$39,863,000,000** for all of the Department of Homeland Security (DHS) for fiscal year 2008. This figure is \$2,118,505,000 above the President's fiscal year 2008 budget request in total discretionary funding for DHS.

Title II—Policy and Management Improvements

- Strikes the current-law authorization for the Under Secretary for Border and Transportation Security and replaces it with a Directorate for Policy (headed by the Senate-confirmed Under Secretary for Policy, who would be the primary policy adviser to the Homeland Security Secretary).
- Within the Directorate for Policy, the bill creates the Office of the Private Sector (administered by an Assistant Secretary for the Private Sector), a Victim Assistance Officer, a Tribal Security Officer, a Border Community Liaison Officer, and such other offices as considered necessary by the Under Secretary for Policy.'
- The Under Secretary for Policy would be required to ensure that all departmental policies, programs, and activities appropriately consider the needs of, and impact upon, children (and would have to report annually on such improvement in the security of children, schools, and child-centered facilities).
- Confers authority to DHS's chief operating officers (the Chief Financial Officer, the Chief Procurement Officer, the Chief Information Officer, the Chief Human Capital Officer, the Chief Administrative Officer, and the Chief Security Officer) over their counterparts in DHS's components to direct planning, operations, and training, as well as personnel activities, the budget, and other DHS financial resources to ensure compliance with DHS-wide policies and plans.
- Directs the Secretary of Homeland Security to undertake a Comprehensive Homeland Security Review (CHSR) for DHS at the beginning of every new presidential administration to ensure that DHS is equipped to execute the full range of missions called for by the President's National Strategy for Homeland Security.
- Expresses a sense of Congress that the planned physical consolidation of DHS and its key component headquarters on the West Campus of St. Elizabeth's Hospital should move forward as expeditiously as possible, with all the agencies involved in this effort bearing those costs for which they are responsible.

- Requires a DHS budget line item for the Office of Counternarcotics Enforcement and directs DHS to recognize the Office of Counternarcotics Enforcement as DHS's primary representative on all counternarcotics related committees and taskforces.

Title III—Oversight Improvements

- Requires the DHS Inspector General to review and report to Congress on each Secure Border Initiative contract valued at greater than \$20 million to ensure compliance with cost requirements, performance objectives, program milestones, small-business participation goals, minority-owned and women-owned business participation goals, and key timelines. Authorizes \$5.5 million for such reviewing in FY2008, 6% of the Inspector General's budget in FY2009, and 7% of the Inspector General's budget in FY2010.
- Creates an Authorization Liaison Officer within the Office of the Chief Financial Officer to ensure responsiveness to the congressional authorizing committees and to work with the Appropriations Liaison Officer to coordinate the sharing of all reports prepared for the congressional appropriations committees.
- Authorizes \$108.5 million in FY2008 for DHS's Office of the Inspector General.
- Expresses a sense of Congress that Congress should implement the 9/11 Commission's recommendation to designate a single committee in each chamber to serve as the single, principal point of oversight and review for homeland security and to authorize DHS activities.

Title IV—Procurement Policy and Resources Improvements

- Directs DHS's Chief Procurement Officer to provide homeland security procurement training to acquisitions employees.
- Directs the Secretary to establish a Council on Procurement Training to advise the Chief Procurement Officer. The Council would consist of the procurement offices from a variety of federal agencies, including the Transportation Security Administration, the Secret Service, the Coast Guard, and others.
- Authorizes the Secretary to hire up to 250 annuitants with experience in procurement and contract management to support DHS's acquisitions capabilities.
- Requires the Secretary to consider the past performance of a contractor prior to deciding whether to award such contractor with a contract.
- Requires the Chief Procurement Officer to conduct an independent review of each procurement for compliance with the Buy American Act.

- Directs DHS to require that any prospective contractor or subcontractor disclose whether it is owned or controlled by a foreign person.
- Requires contractors bidding on a DHS contract to disclose any role the bidder, employees of the bidder, or any parent or subsidiary of the bidder may have played in certain activities during the bid development process.
- Prohibits DHS funds from being used for procurement of uniforms, protective gear, badges, insignia, or identification cards manufactured outside the U.S., subject to exception.
- Establishes a DHS Mentor-Protégé program within the Office of Small and Disadvantaged Business Utilization, aimed at encouraging large contractors to provide developmental assistance to small business interests.
- Prohibits the DHS Secretary from awarding a contract or grant to an institution of higher education that refuses to allow the United States Coast Guard access to its campuses and students for the purposes of recruiting in a manner that is at least equal in quality and scope to the access provided to any other employer.
- Prohibits the Secretary from reducing the number or hours of employees of the Federal Protective Service until Congress has held hearings on this issue and the Government Accountability Office (GAO) has submitted a related report to Congress.

Title V—Workforce and Training Improvements

- Grants law enforcement officer status for retirement pay purposes to Customs and Border Protection Officers, retroactive to the date of creation of the Department of Homeland Security in March 2003. Allows catch-up contributions.
- Directs DHS's Chief Human Capital Officer to submit to Congress a plan to improve the representation of minorities in various categories of DHS employment, and instructs the GAO to assess the DHS plan.
- Continues the authority of the Federal Law Enforcement Training Center to hire and maintain up to 500 federal annuitants as trainers until December 31, 2008.
- Directs DHS to establish a retention program for Border Patrol agents, including pay and benefits incentives.
- Limits compensation (salary plus benefits) by DHS of specialized detailees to the Department to no more than the highest basic pay available under the Senior Executive Service.
- Treats DHS as a single entity for the current-law restrictions on lobbying one's former place of employment. (Presumably, this provision is aimed at preventing someone from

working for one agency within DHS, leaving DHS, and then immediately lobbying some other agency within DHS.)

- Requires the Secretary of Homeland Security to conduct a Department-wide review of the security clearance and suitability review process for employees, contractors, and state, local, and private-sector officials who require access to DHS's sensitive information.
- Creates a DHS Chief Security Officer for personnel security, facility access, and security awareness.
- Directs DHS to replace "human capital" in DHS's operations, policies, and programs.
- Restricts the Secretary of Homeland Security's ability to manage DHS's workforce by repealing the human resources management provisions in the Homeland Security Act of 2002. Also repeals the President's authority to waive the human resources management provisions in the Homeland Security Act (i.e. the provisions allowing DHS employees to join collective bargaining units) not expressly repealed by this section. **The minority staff of the House Homeland Security Committee writes that, "The Republican Members of the Committee strongly oppose the repeal of the President's current authority to waive personnel provisions if they have a substantial adverse impact on the Department's ability to protect homeland security, as provided by the Homeland Security Act of 2002. Republicans also oppose the repeal of the Homeland Security Secretary's authority to manage the homeland security workforce with modern personnel tools, including the ability to tie pay increases to employee performance, implement employee training programs, and develop programs to ensure that the Department can continue to attract and retain the best workforce possible." The personnel provisions in the original DHS law were designed to make DHS as flexible as possible and to prioritize the actual providing of security rather than the protection of government jobs.**

Title VI—Biopreparedness Improvements

- Establishes the Office of Health Affairs, headed by a Senate-confirmed Chief Medical Officer and Assistant Secretary for Health Affairs, to coordinate and oversee the DHS's medical care, public health, food, water, veterinary, and agriculture activities.
- Modifies the Project BioShield Act of 2004 to accelerate and prioritize DHS's performance of Material Threat Assessments and Material Threat Determinations. Extends the authorizations for them through FY2009 and provides "such sums" to help the Department meet an accelerated (December 31, 2007) deadline for certain assessments.
- Creates a National Biosurveillance Integration Center (authorized at "such sums") to enhance the federal government's ability to rapidly identify and track a biological event and creates a Director to head the Center. The Center would have to create and maintain an integrated biosurveillance network. The Center would have to be fully operational by the end of FY2008.

- Directs the Secretary to develop a risk analysis process that utilizes a scientific, quantitative methodology to assess and manage risks posed by chemical, biological, radiological, and nuclear agents, and to conduct integrated assessments of such threats (the first one due by June 2008).
- Establishes the National Bio and Agro-defense Facility as part of the Science and Technology Directorate in DHS and authorizes the procurement of real property for the facility. This Facility would be “an integrated human, foreign-animal, and zoonotic disease research, development, testing, and evaluation facility with the purpose of supporting the complementary missions of the Department, the Department of Agriculture, and the Department of Health and Human Services in defending against the threat of potential acts of agroterrorism and natural-occurring incidents related to agriculture with the potential to adversely impact public health, animal health, and the economy, or may otherwise impact homeland security.”

Title VII—Homeland Security Cybersecurity Improvements

- Creates a DHS Office of Cybersecurity and Communications, headed by an Assistant Secretary for Cybersecurity and Communications under the jurisdiction of the Under Secretary for Information Analysis and Infrastructure Protection.
- Authorizes this new Assistant Secretary, under the direction of the Under Secretary for Science and Technology, and in conjunction with the National Science Foundation and other such entities, to support cybersecurity training and development.
- Earmarks \$50 million from total DHS funds for cybersecurity research and development.

Title VIII—Science and Technology Improvements

- Requires the development of a strategic plan by the Under Secretary of Science and Technology, addressing a number of issues, including workforce, interagency coordination, and innovation.
- Earmarks \$31 million from the overall DHS funding level for the Centers of Excellence Program and \$8 million for the Minority Serving Institutions program for FY2008, and prohibits any Center of Excellence receiving funding in FY2007 from having its funding cut. Also requires that at least one of the next four Centers of Excellence established by DHS be located at a Minority Serving Institution (historically black, Hispanic, or tribal college or university). Earmarks \$500,000 from overall DS funding for the National Research Council to study the effectiveness of the Centers of Excellence Program.
- Requires the Secretary to provide “sufficient” numbers of trained personnel to analyze technologies submitted to DHS to be designated and certified under the SAFETY Act, which provides liability protections for certain anti-terrorism technologies.

- Establishes the Science and Technology Homeland Security International Cooperative Programs Office, to develop understandings and agreements to allow and support international cooperative activities in support of homeland security research, development, and testing. U.S. funding expended on such international cooperative activities would have to be matched by the foreign partner organization (directly or indirectly). Foreign partners could include Israel, the United Kingdom, Canada, Australia, Singapore, “and other allies in the global war on terrorism.” Earmarks \$100 million over four years for this international cooperation.

Title IX—Border Security Improvements

- Requires submission—within a week of this bill’s enactment—of a comprehensive strategy for the biometric entry and exit data system requirements from the Intelligence Reform and Terrorism Prevention Act of 2004 (commonly known as US-VISIT). Prohibits transfer of US-VISIT to the National Protection and Programs Directorate, as determined by the Secretary, until after this strategy has been submitted to Congress.
Note: The Republican Members of the Homeland Security Committee oppose this provision.
- Requires that the exit portion of the biometric system be fully operational by December 31, 2008.
- Authorizes \$4.1 million in FY2008 for the Customs Patrol Officers unit of the Bureau of Customs and Border Protection operating on the Tohono O’odham Indian reservation (commonly known as the “Shadow Wolves” unit).
- Requires the Secretary to take steps necessary to control the costs of hiring, training, and deploying new Border Patrol agents, so as not to exceed \$150,000 per agent (subject to exception).
- Requires DHS to require academic institutions and programs that sponsor international students and exchange visitors to verify (at least once every 60 days) that those international students and exchange visitors are in fact actively participating in the programs for which they were admitted to the United States. Transfers to other institutions or health-related incapacitations would have to be reported to DHS. Sponsoring institutions would be guaranteed access to the Student and Exchange Visitor Information System (which itself would have to be updated to include additional data fields, as detailed in the legislation). “Such sums” would be earmarked from overall DJS funding for these provisions.
- Requires the Secretary to assess and report to Congress on ways to reduce border crossing wait times (to pre-September 11th levels) for pedestrian, commercial, and non-commercial traffic at land ports of entry.
- Codifies a pilot program for mobile biometric identification of apprehended illegal aliens in the maritime environment and earmarks \$10 million for this program.

- Requires GAO to report to Congress on the policies and procedures of the Border Patrol regarding the lethal and non-lethal use of force in pursuit of fleeing vehicles.

Title X—Information Sharing Improvements

- Authorizes “such sums” to establish a State and Local Fusion Center Program, which will include deployment of DHS personnel and retired local law enforcement to participating state and local centers. DHS detailees would have to receive privacy training (authorized at \$3 million for each of fiscal years 2008 through 2013, and “such sums” thereafter).
- Authorizes the Secretary to appoint—within five years of this bill’s enactment—up to 100 rehired annuitants to positions in the fusion center program to facilitate information sharing between DHS and state, local, and tribal law enforcement agencies.

Title XI—Miscellaneous Provisions

- Creates a new program to expand homeland security training for local and tribal law enforcement agencies in rural areas.
- Requires the owners of high risk critical infrastructure sites to conduct checks of their employees against available terrorist watch lists and immigration status databases (authorized at “such sums”).
- Authorizes “such sums” to encourage the development and use of software- or Internet-based computer capabilities to support real-time incident management by federal, state, local, and tribal agencies, as well as to encourage the use of computerized training aids for state and local agencies.
- Requires recipients of DHS grants, as a condition of receiving such grants, to submit publicly-available expenditure reports to the Secretary no later than 30 days after the last day of each fiscal quarter.
- Creates a new federal civil action against the deliberate use of the DHS name, initials, insignia, and seal for commercial purposes (including Internet domain names and email addresses), subject to exception by written permission.
- Earmarks \$252 million of overall DHS funds over four years to create the Metropolitan Medical Response System Program to support local jurisdictions in enhancing and maintaining all-hazards response capabilities to manage mass casualty incidents. Through this program, which would not be subject to personnel caps, the Administrator of the Federal Emergency Management Agency (FEMA) would administer financial assistance provided to state and local jurisdictions. One hundred percent of the assistance would have to be passed through to localities, unless the state and localities agree that the state retain up to 20% of the assistance for the facilitation of state-local integration of efforts.

- Earmarks \$300 million of overall DHS funds over three years to create a new grant program to assist states in achieving compliance with the REAL ID Act of 2005 (to prevent fraudulent obtaining and using of state-issued ID cards and to develop more secure state-issued documents used for federal purposes).
- Requires a report from the Secretary on the status of DHS activities regarding agriculture security and the prevention of agro-terrorism.
- Requires a report on the vulnerabilities of the nation's levee system to terrorist attack.
- Authorizes \$1.6 billion and 6,822 full-time-equivalent positions for the United States Secret Service in FY2008. The Republican staff of the Homeland Security Committee notes that this would be the first authorization of specific funding levels for the Secret Service in its 140-year history.
- Requires the Secretary to share information—taking privacy concerns into account—on disaster assistance requested or provided in response to an act of terrorism, natural disaster, or other emergency to federal, state, and local law enforcement entities to assist in the location of a missing child or a sex offender.

Title XII—Maritime Alien Smuggling

- Creates a separate federal crime to “assist, encourage, direct, induce, transport, move, harbor, conceal, or shield from detection an individual in transit from one country to another on the high seas, knowing or in reckless disregard of the fact that such individual is an alien, known, or suspected terrorist, or an individual seeking to commit terrorist activity, seeking to enter the United States without official permission or lawful authority.” An attempted violation or conspiring to violate this offense would be punished the same as the actual violation. One could defend himself against a charge of violating this offense by showing that he reported the transport of the alien to the Coast Guard (as part of a rescue or because of extenuating—such as medical—circumstances).
- Sets the penalties for basic violations of this title at a minimum of three years—but not more than twenty years—in prison and/or a fine of up to \$100,000. Penalties increase as the results of the violations increase (such as bodily harm, terrorism, death).
- Property (and/or the proceeds from the sale of property) used in a violation of this title could be seized.

Additional Background: In the 109th Congress, H.R. 1817 was the first DHS authorization bill to be reported to the House since the creation of DHS in the Homeland Security Act of 2002 (P.L. 107-296) in the wake of the terrorist attacks of September 11, 2001. H.R. 1817 authorized appropriations for FY2006. No bill was reported authorizing FY2007 appropriations. H.R. 1817 passed the House by a vote of 424-4: <http://clerk.house.gov/evs/2005/roll189.xml>.

Committee Action: On March 26, 2007, the bill was referred to the Homeland Security Committee, which marked up the bill two days later and ordered it reported to the full House by a 26-0 recorded vote.

Possible Conservative Concerns: Some conservatives may be concerned at the repeal of the President's and Secretary's personnel authority for DHS employees, provided in the originating statute for DHS to make the Department as flexible as possible and to prioritize the actual providing of security rather than the protection of government jobs. Some conservatives may also be concerned at the bill's creation of new programs and offices in a Department often regarded as bloated, without corresponding reductions or consolidations of programs and offices.

Administration Position: Although a Statement of Administration Policy was not available at press time, reports indicate that the Administration will strongly oppose this legislation because of the personnel authority provisions referenced in the "Possible Conservative Concerns" section above.

Cost to Taxpayers: CBO estimates that this bill would authorize \$39.863 billion in FY2008 and a total of \$40.358 billion over the FY2008-FY2012 period. Note that, just because the bill language says that an authorization should come from existing funds or from overall DHS funds, does not mean that CBO scores it that way. See the details here: <http://www.cbo.gov/ftpdocs/80xx/doc8045/hr1684.pdf>.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill would create a variety of new programs and offices in DHS without corresponding provisions for the consolidation and streamlining of existing DHS programs and authorities.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill contains a mandate that public and private education institutions hosting exchange visitors increase their tracking of their activities. The bill would also impose a private-sector mandate regarding the commercial and Internet use of the DHS name or insignia. "CBO estimates that the cost of those mandates would be well below the annual thresholds established by UMRA (\$66 million for intergovernmental mandates and \$131 million for private-sector mandates in 2007, adjusted annually for inflation)."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Homeland Security Committee, in House Report 110-122, reports that Rep. Dave Reichert (R-WA) submitted an earmark for \$500,000 for a dedicated DHS Inspector General field office in Bellingham, Washington. The relevant section of the underlying bill (Section 303) does not contain any DHS Inspector General earmark (just an overall funding level for the DHS Inspector General), and it is unclear whether this earmark will be honored.

Constitutional Authority: The Homeland Security Committee, in House Report 110-122, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to provide for the common defense of the United States).

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